

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE PUBLIC SERVICE COMMISSION

Case No. 2019-001354

Stephen and Beverly Noller and Michael and Nancy
Halwig, Appellants,

v.

Daufuskie Island Utility Company, Incorporated and
South Carolina Office of Regulatory Staff, Respondents.

CORRECTED RECORD ON APPEAL

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RECORD ON APPEAL

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**SOUTH CAROLINA PUBLIC SERVICE COMMISSION
HEARING EXAMINER DIRECTIVE**

DOCKET NO. 2018-364-WS Order No. 2019-22-H

FEBRUARY 27, 2019

Hearing Officer: Randall Dong

DOCKET DESCRIPTION:

**Stephen and Beverly Noller and Michael and Nancy Halwig,
Complainants/Petitioners v. Daufuskie Island Utility Company, Incorporated,
Defendant/Respondent**

MATTERS UNDER CONSIDERATION:

**Hearing Date Held in Abeyance; Briefing Schedule and Oral Argument Schedule
Established**

HEARING EXAMINER'S ACTION:

**The hearing scheduled for February 28, 2019 is to be held in abeyance at this time. A new
hearing date will be scheduled, if necessary, at a future date by the Commission.**

**The parties are to brief the Commission on matters of jurisdiction. There will be an
opportunity for a brief, a reply brief, and oral arguments. The schedule and deadline for
each of these items is as follows:**

March 6th: Initial briefs

March 13th: Responsive briefs

March 20th: Oral arguments

**The oral argument will be held in the Commission Hearing Room at 101 Executive Center
Dr, Columbia, SC 29210. It will be scheduled for 10:00 a.m.**

Action Item 3PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE

ADMINISTRATIVE MATTER	<input type="checkbox"/>	DATE	<u>June 12, 2019</u>
MOTOR CARRIER MATTER	<input type="checkbox"/>	DOCKET NO.	<u>2018-364-WS</u>
UTILITIES MATTER	<input checked="" type="checkbox"/>	ORDER NO.	<u>2019-424</u>

THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.**SUBJECT:**

DOCKET NO. 2018-364-WS - Stephen and Beverly Noller and Michael and Nancy Halwig, Complainants/Petitioners v. Daufuskie Island Utility Company, Incorporated, Defendant/Respondent - Staff Presents for Commission Consideration Stephen and Beverly Noller and Michael and Nancy Halwig, Complainants/Petitioners v. Daufuskie Island Company, Incorporated, Defendant/Respondent.

COMMISSION ACTION:

As you may recall, we had the attorneys argue the jurisdictional threshold issue before the Commission earlier this year, as to whether or not the Commission even had subject-matter jurisdiction to hear this dispute where the parties are seeking a monetary award based on a contract issue.

I'm going to move that we dismiss the case, as the Public Service Commission does not have the statutory authority to grant monetary damages, which is the relief requested in the pleadings. And as a part of the motion, I'd like to add that the Commission, of course, does have the authority to deal with service-connection and termination issues, and, therefore, as a part of the motion, the dismissal should not result in a disconnection of service to either of the Complainants' residences during the pendency of this contractual dispute. So to the extent that it is within our jurisdictional authority, I move that we stay any disconnection of service for the residences in question, while these contractual disputes are pending.

PRESIDING: RandallSESSION: RegularTIME: 12:30 p.m.

	MOTION	YES	NO	OTHER
BELSER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Recused</u>
ERVIN	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
RANDALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WHITFIELD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WILLIAMS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

(SEAL)

RECORDED BY: J. Schmieding



Action Item 4

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER	<input type="checkbox"/>	DATE	<u>July 17, 2019</u>
MOTOR CARRIER MATTER	<input type="checkbox"/>	DOCKET NO.	<u>2018-364-WS</u>
UTILITIES MATTER	<input checked="" type="checkbox"/>	ORDER NO.	<u>2019-523</u>

THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.

SUBJECT:

DOCKET NO. 2018-364-WS - Stephen and Beverly Noller and Michael and Nancy Halwig, Complainants/Petitioners v. Daufuskie Island Utility Company, Incorporated, Defendant/Respondent - Staff Presents for Commission Consideration the Complainants' Petition for Rehearing or Reconsideration.

COMMISSION ACTION:

On June 12, by Commission Order No. 2019-424, we dismissed the Complaint of the Nollers and the Halwigs against Daufuskie Island Utility Company. On June 21, the Complainants timely filed a Petition for Reconsideration and/or Rehearing. The Company did not file a response to the Petition.

The Complainants seek reconsideration or rehearing on three grounds or matters:

1) The Complainants state that the Commission does have jurisdiction over the matter, because DIUC has failed to provide adequate and proper water and sewer services to the Complainants. However, DIUC began providing water and sewer service to the homeowners in December of 2018. This issue has long-since been rendered moot.

2) The Complainants state that the Commission has jurisdiction to hear this matter in order to remedy the failure of DIUC to submit the Customer Service Agreement for approval (pursuant to S.C. Code Reg. 103-541 and 103-743) before it was entered into with Homeowners. While it is true that this Commission has broad authority over approval of contracts entered into by regulated entities, even if the Commission were to find such actions were violative of properly promulgated regulations, that would still not grant the Commission an ability it does not possess, i.e., we cannot grant monetary damages under an allegedly invalid contract, and in this Petition the Complainants are seeking monetary damages, and that would be for a court of competent jurisdiction, not a proper matter for the South Carolina Public Service Commission.

3) The Complainants believe the Commission has the ability to provide monetary damages to the Complainants. In fact, the Complainants cite S.C. Code Ann. Section 58-5-270 and Section 58-5-710.

Under -270, the Commission certainly does have the jurisdictional authority to hear complaints properly brought before it. However, in this case, monetary damages are being sought -- and the Commission simply does not have the authority to grant such an award.

The Commission does have authority under -710 to levy a fine or penalty against a regulated utility if the utility is failing to show cause as to why it is not taking steps to provide adequate water and sewer service. As I mentioned earlier, service has been and is continuing to be rendered to the Complainants. Even if that weren't that case, any fines or penalties levied by this Commission go into the General Fund of the State, not to the Complainants.

For these reasons, I move that the Complainants' Petition for Rehearing and/or Reconsideration should be denied in its entirety.

PRESIDING: RandallSESSION: Regular

TIME: 2:00 p.m.

	MOTION	YES	NO	OTHER	
BELSER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Recused</u>	
ERVIN	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
RANDALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
WHITFIELD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
WILLIAMS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Absent</u>	Military Leave

RECORDED BY: J. Schmieding



Complete Form, Print, Sign and Mail to:
Public Service Commission of South Carolina
101 Executive Center Dr., Suite 100
Columbia, SC 29210



Phone: 803-896-51
Fax: 803-896-51
www.psc.sc.gov
Text PSCAGENDAS to 394

To receive an alert when Meeting Agendas are released

Individual Complaint Form

Date: 11/16/2018

Complainant or Legal Representative Information: * Required Fields

Name * Newman J. Smith
Firm (if applicable) Nelson Mullins Riley & Scarborough LLP
Mailing Address * 151 Meeting Street/PO Box 1806
City, State Zip * Charleston SC 29401 Phone * 843-534-4309
E-mail jack.smith@nelsonmullins.com

Name of Utility Involved in Complaint: * Daufuskie Island Utility Company

Type of Complaint (check appropriate box below): *

☐ Billing Error/Adjustments ☐ Deposits and Credit Establishment ☐ Wrong Rate ☒ Refusal to Connect Service
☐ Disconnection of Service ☐ Payment Arrangements ☐ Water Quality ☒ Line Extension Issue
☐ Service Issue ☐ Meter Issue
☐ Other (be specific) _____

Have you contacted the Office of Regulatory Staff (ORS)? * ☒ Yes ☐ No Name of ORS Contact: Mr. Chad Campbell

Concise Statement of Facts/Complaint: * (This section must be completed. Attach additional information to this page if necessary.)

Daufuskie Island Utility Company (DIUC) required customers Halwig and Noller (46 and 36 Driftwood Cottage Lane, Daufuskie Island, Beaufort County, SC) to install replacement water and sewer mains that serve part of Driftwood Cottage Lane for the mains destroyed by Hurricane Matthew. All costs of engineering, permitting and installation were paid by these customers to the engineers and contractors and agencies for the replacement mains because DIUC refused to provide temporary or permanent replacement mains and maintained that replacement of its mains was these customers' responsibility. (See continuation, attached.)

Relief Requested: * (This section must be completed. Attach additional information to this page if necessary.)

The customers Halwig and Noller request the Commission require DIUC to immediately restore service through the replacement lines and to compel DIUC to refund the full costs paid by the customers for the replacement lines. (See continuation, attached.)

**I GIVE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA PERMISSION TO PUBLISH THIS COMPLAINT AND ITS CONTENTS ON THE COMMISSION'S WEBSITE (dms.psc.sc.gov), AND I UNDERSTAND SUCH INFORMATION MAY BE SUBJECT TO PUBLIC SCRUTINY OR FURTHER RELEASE. ☒ Yes ☐ No

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)

VERIFICATION

Complainant's Signature * (MUST BE SIGNED, DO NOT PRINT)

I, Mr./Mrs. Halwig and Mrs. Noller
Complainant's Name *

verify that I have read my complaint filed on 11/16/18

Internal Use Only



and know the contents thereof, and that said contents are true.

Complainant's Signature * (MUST BE SIGNED, DO NOT PRINT)

J. M. Noller

Complete Form, Print, Sign and Mail to:
Public Service Commission of South Carolina
101 Executive Center Dr., Suite 100
Columbia, SC 29210



Phone: 803-896-5100
Fax: 803-896-5199
www.psc.sc.gov
Text PSCAGENDAS to 39492

To receive an alert when Meeting Agendas are released

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|--|--|--|--|
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| <input type="checkbox"/> Other (be specific) _____ | | | |

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Complainant's Signature * (MUST BE SIGNED, DO NOT PRINT)

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)

VERIFICATION

I, Mr./Mrs. Halwig and Mrs. Noller verify that I have read my complaint filed on 11/16/18
Complainant's Name * Date *
and know the contents thereof, and that said contents are true.

Complainant's Signature * (MUST BE SIGNED, DO NOT PRINT)

Internal Use Only

Processed By	Date
H.E.	

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<input type="checkbox"/> Service Issue	<input type="checkbox"/> Meter Issue		
<input type="checkbox"/> Other (be specific) _____			

Have you contacted the Office of Regulatory Staff (ORS)? *	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Name of ORS Contact: <u>Mr. Chad Campbell</u>
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Relief Requested: * (This section must be completed. Attach additional information to this page if necessary.) The customers Halwig and Noller request the Commission require DIUC to immediately restore service through the replacement lines and to compel DIUC to refund the full costs paid by the customers for the replacement lines. (See continuation, attached.)
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STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)

VERIFICATION

Complainant's Signature (MUST BE SIGNED, DO NOT PRINT)

I, Mr./Mrs. Halwig and Mrs. Noller
Complainant's Name *

verify that I have read my complaint filed on 11/16/18
Date *

and know the contents thereof, and that said contents are true.

Beverly D. Noller
Complainant's Signature (MUST BE SIGNED, DO NOT PRINT)
Beverly D. Noller

Page 1

Internal Use Only	
Processed By	Date
H.E.	

Public Service Commission of South Carolina, Halwig and Noller Complaint

RE: Daufuskie Island Utility Commission filed November 16, 2018

Page 1

Continuation of Statement of Facts/Complaint

Daufuskie Island Utility Company (DIUC) has failed to provide adequate and proper service to its customers Halwig and Noller (46 and 36 Driftwood Cottage Lane, Daufuskie Island, Beaufort County, SC) since October of 2016. DIUC refused to replace water and sewer mains that serve part of Driftwood Cottage Lane since they were destroyed by Hurricane Matthew. DIUC also refused to replace the mains destroyed by the storm with alternative mains to serve the customers' homes. Instead, DIUC forced the Halwigs and Nollers to install replacement water and sewer mains for all lots on Driftwood Cottage Lane since they were destroyed by Hurricane Matthew with the promise that DIUC would restore water and sewer service once the mains were replaced. All costs of engineering, permitting and installation were paid by these customers to the engineers and contractors and agencies for the replacement mains because DIUC refused to provide temporary or permanent replacement mains and maintained that replacement of its mains was these customers' responsibility. Even though DIUC promised to restore service once the customers replaced the mains, DIUC has failed to do so and continues to refuse to provide adequate and proper service.

Plaintiffs are John and Nancy Halwig, the owners of 46 Driftwood Cottage Lane, Daufuskie Island, Beaufort County, South Carolina, and Beverly and Stephen Noller, the owners of 36 Driftwood Cottage Lane, Daufuskie Island, Beaufort County, South Carolina.

Plaintiffs' properties are within Melrose Plantation on Daufuskie Island. The Driftwood Cottage Lane area within Melrose has suffered from Hurricane Matthew which struck on October 8, 2016. As a result of the erosion from Hurricane Matthew, a portion of Driftwood Cottage Lane was washed out, and with it water and sewer mains owned by Daufuskie Island Utility Company. While the homes to the south of the washout on Driftwood Cottage Lane continued to have service from DIUC, the homes and lots north of the washout, particularly the homes of John and Nancy Halwig and Beverly and Stephen Noller, did not. When the utility company was asked when it would restore the utility service to these homes, the utility stated in a letter that it would not be able to restore service and that the two families on that street would have to provide an alternative extension of mains and utilities at their own, personal cost. When the Halwigs filed a Complaint with the South Carolina Office of Regulatory Staff ("ORS") regarding the refusal of DIUC to restore service, the ORS replied that the statutes do not provide a definitive time frame within which service has to be restored.¹ Based on this response, DIUC opted not to replace the mains or restore service at all.

Because DIUC refused to replace the mains and utilities, the Halwigs and Nollers were required to find an alternate route for mains to replace the one disconnected at the washout of Driftwood Cottage Lane to the remainder of the mains under Driftwood Cottage Lane. Several other lots in addition to these two developed lots exist and could utilize the mains. Because the Driftwood Cottage Lane neighborhood is adjacent to two holes of the Melrose Golf Course and a road across the golf course called Martinangel Lane, which did have utility mains under it, the logical

¹ See letter from ORS to Dr. Halwig dated December 2, 2016, ORS file # 2016-W-1682.

Public Service Commission of South Carolina, Halwig and Noller Complaint
 RE: Daufuskie Island Utility Commission filed November 16, 2018
 Page 2

place to seek alternative routing for replacement mains to Driftwood Cottage Lane would be through the golf course property. The golf course property, owned by the Melrose Resort owner, was in the process of going through bankruptcy. In spite of this, the Halwigs and Nollers persevered and eventually were able to get the former lender and now owner of the Melrose Golf Course to agree to the easement to allow the lines to be installed near the 17th hole of the golf course. The process of obtaining the easement took more than a year, and throughout that time, the Halwigs and Nollers remained without water and sewer services at their properties. DIUC did not assist in finding the alternate route for the mains or in securing the necessary easement for installation.

Once the Halwigs and Nollers obtained the easement, the water and sewer mains could be installed through the golf course property. On January 30, 2018, DIUC provided the Halwigs and the Nollers with a Customer Service Agreement, which detailed the terms under which DIUC would provide service to the Halwigs and the Nollers. The Customer Service Agreement provides that the Halwigs and Nollers were to install the mains at their own expense. The Customer Service Agreement required the Halwigs and the Nollers to provide DIUC with the easement, invoices related to the costs that they were incurring at their own expense, and "as built" drawings prepared by a licensed surveyor. The Customer Service Agreement also provides that the Halwigs and Nollers will provide DIUC with a bill of sale transferring ownership of the mains to DIUC upon completion. The Customer Service Agreement provides that:

Under the circumstances of the need for this agreement, there will be no charge for administrative fees. Upon execution of this agreement and compliance with its provisions, service will be connected to Customers premises.

The installation of the replacement mains was finally completed and accepted by the engineer at the end of September 2018. All of the engineering costs, agency permitting, installation and other costs involved in replacing the water and sewer mains was paid for by the Halwigs and Nollers. Every item of paperwork required by DIUC has been delivered to DIUC. DIUC has accepted the installation and the Bill of Sale transferring ownership of the replacement mains to DIUC. The DHEC permit is now DIUC's responsibility. The project engineer has accepted the completion of the work as of September 28, 2018. At no time did DIUC offer any assistance and only provided the name of their preferred engineering firm.

Despite the fact that the Halwigs and the Nollers executed the Customer Service Agreement and complied with its terms, DIUC still refuses to provide service to the Halwigs' and Nollers' properties as it agreed to do so under the Customer Service Agreement. DIUC would not allow service to be restored even temporarily at that time for testing to make sure that it was properly connected to the homes. As of the date of this filing, service has not yet been restored to the Halwigs' and Nollers' homes.

Instead of complying with the Customer Service Agreement, DIUC has provided the Halwigs and the Nollers with an Addendum to the Customer Service Agreement, in which DIUC has

Public Service Commission of South Carolina, Halwig and Noller Complaint

RE: Daufuskie Island Utility Commission filed November 16, 2018

Page 3

demand (1) payment of additional expenses never mentioned in the Customer Service Agreement, including its attorney's fees and taxes expected to be imposed on DIUC for the costs paid for by the Halwigs and Nollers for the replacement mains; and (2) a withdrawal and release of any and all claims and complaints the Halwigs and Nollers have asserted or may assert against DIUC before PSC or otherwise in regard to the installation of the Project Mains. DIUC has demanded execution of this Addendum prior to providing water and sewer service to the Halwigs' and Nollers' homes. Copies of the Customer Service Agreement and proposed Addendum to the Customer Service Agreement are attached with the correspondence referred to in this Complaint. Copies of the documentation for the engineering services provided by Thomas and Hutton, the contractor services provided by PINCO Construction, permitting by DHEC, and cost of equipment are available if requested.

The terms of the Customer Service Agreement between the Halwigs and Nollers and DIUC does not require that the Halwigs and Nollers pay any attorney fees or taxes that might be due and payable in the future by DIUC based upon the cost of installation of the replacement lines necessary for DIUC to provide service to the Halwigs and Nollers. The Agreement is clear that "[u]nder the circumstances of the need for this agreement, there will be no charge for administrative fees." (Agreement, Page 2). Taxes and attorney fees would be administrative fees. Legal fees are typical operating expenses and not included in the cost of Contributions in Aid of Construction or Customer Main Extension Fees.

While the Agreement does state that "in order to protect other customers from sharing in the cost responsibility, it would be the responsibility of the affected Customers to have the Project Mains installed in accordance with the plans they solicited from Thomas & Hutton, at their cost" (emphasis added), the cost of installation does not include any ancillary costs incurred by DIUC, and certainly no speculative costs. Moreover, the setting of rates is not a DIUC decision and can only be set by the SC Public Service Commission, or potentially a court decision. The sharing by customers of all costs of DIUC for the facilities, services and related costs (such as taxes) is a decision of the PSC. The Halwigs and Nollers did not agree to pay a potential liability of DIUC, especially without notice, discussion or mention in the Agreement.

The Halwigs and the Nollers should never have had to pay for the replacement of the Mains, much less for the potential taxes and attorney fees of DIUC related to such replacement. Lines destroyed by a sinkhole, flood or other natural causes should not be the responsibility of the customers affected by the loss. DIUC has the following responsibility under the PSC regulations:

. . . unless specifically relieved in any case by the commission from such obligation, shall operate and maintain in safe, efficient and proper conditions all of its facilities and equipment used in connection with the services it provides to any customer up to and including the point of delivery into systems or facilities owned by the customer.

See R.103-540 and 740. When it is not possible to replace the infrastructure lost in the same place, the utility should not simply be relieved from replacing the infrastructure in another place.

Public Service Commission of South Carolina, Halwig and Noller Complaint
 RE: Daufuskie Island Utility Commission filed November 16, 2018
 Page 4

The PSC cannot allow a utility to shift the burden of water and sewer infrastructure replacement to those whose service was lost through damage to the infrastructure of the utility. Repairing damage and replacing systems as necessary is part of running a utility business. Good business practice, especially when profit is built in by the rate structure approved by a government authority, must include funds for replacement of the critical infrastructure necessary to maintain homes in a habitable condition. The costs demanded here are not for any installation at these individual customers houses, that cost was excluded by DIUC in calculating the cost to then tax and in determining what it would accept responsibility for maintaining. These customers have been forced to pay for replacement mains that are DIUC's responsibility.

Despite the language of the Agreement stating that there will be "no charge for administrative fees," DIUC continues to demand, prior to restoration of service, payment of an estimated tax it may bear on the amount paid by the customers for the replacement system DIUC refused to replace. The future imposition of a federal tax on the cost paid for installation is not a cost under a Customer Main Extension Fee (R.103-502.3). The Public Service Commission has not yet held a hearing or made a final decision regarding the amount of a tax or how any tax that may be due under such a situation would be handled in setting future rates.² The imposition of the full tax amount expected based solely on the cost of installation also does not account for the potential deductible loss of the system being replaced, depreciation or other factors in determining tax liability.

DIUC has argued that the requirement to Preserve Tax Benefits in the referenced Docket should be in a future rate relief proceeding.³ However, the mains installed by the Halwigs and the Nollers are replacements for the mains that were destroyed by the storm. They are not new lines and should not be treated like a contribution to the utility like new lines. The treatment of the "income" from the payments made by these customers cannot be compared to voluntary contributions in aid of construction or a customer main extension fee. The refusal of DIUC to replace the lines or make any effort to provide even temporary service made the payment by these customers involuntary; without replacing the system themselves the homes they built could not be used and could be condemned. These customers being forced to pay for the replacement mains should not be allowed, the replacement is DIUC's responsibility. Most importantly as set for the above, the Agreement does not include DIUC costs of any kind be paid by these customers, only the cost of installation.

Further, it would be inappropriate to charge the Halwigs and the Nollers a tax or attorney fees for the replacement of lines that serve all of the lots along Driftwood Cottage Lane above the area where erosion destroyed the road. The replacement mains connect from Martinangel Lane to the lines under Driftwood and not directly to these customers' homes. The replacement Mains only connect one street to the next. The only equipment installed onto the Halwigs' or Nollers' property were the grinder pumps. These pumps had to be replaced in order to manage the change

² PSC Docket #2017-381-A.

³ PSC Docket #2017-381-A: October 10, 2018 Supplemental Filing. "DIUC requests the Commission find that all effects of the Tax Act on DIUC's allowable expenses and revenues may be determined only in the context of a rate relief proceeding during which all revenues and expenses are to be considered in setting a just and reasonable rate." (at page 4).

Public Service Commission of South Carolina, Halwig and Noller Complaint
 RE: Daufuskie Island Utility Commission filed November 16, 2018
 Page 5

in water flow to the replacement lines. DIUC has identified the grinder pumps as the exclusive responsibility of the owners and has excluded grinder pumps from the equipment transferred to DIUC. DIUC has accepted responsibility for the operation and maintenance of the replacement mains, which provide service to all of the lots along Driftwood Cottage Lane above the wash out.

The refusal to turn on the water and sewer service at the Halwigs' and Nollers' homes after completion of the permitting and installation of the replacement lines is not reasonable and shows a lack of good faith on the part of DIUC. All requirements under the Agreement have been met and satisfied. No further amounts are due and payable to DIUC under the Agreement. The only items allegedly in dispute from DIUC's perspective are its attorney's fees and as yet not due potential tax liability.⁴ In addition, DIUC has demanded in the Addendum to the Customer Service Agreement that the Halwigs and Nollers provide a withdrawal and release of any and all claims and complaints the Halwigs and Nollers have asserted or may assert against DIUC before PSC or otherwise in regard to the installation of the Project Mains. These new demands are not reasonable and would require the customers to relinquish significant rights in exchange for service that DIUC already has an obligation to provide. There is no regulatory requirement for the notion behind DIUC's position throughout the two (2) year plus lack of service that "it is not appropriate for the Company to incur such costs which would then be passed on to its other customers through the rate setting process."⁵ The decision to 'pass on' any costs is a decision for the PSC and not DIUC, is not certain, and, under the circumstances, fails to support the demands made on DIUC's own customers, especially when all costs of installation have been paid by the Halwigs and the Nollers, who have no recourse to other water providers. Significantly as well, these customers had no choice but to pay for replacement lines because DIUC forced them to choose to do that or lose their beachfront homes. These customers are still without service.

These customers' homes have been without water and sewer service for over two years, and the lack of service has caused a great deal of loss to both families. DIUC's refusal to provide service continues in the face of installation of replacement mains by the customers at the customers' own cost and every item of paperwork required by DIUC having been delivered to DIUC, which has accepted the installation, including the Bill of Sale for the replaced system from the Halwigs and Nollers. DIUC has still refused to return service to these homes, based on the demand for payment of the attorney's fees and potential tax liability and release of any claims against DIUC. Such refusal to restore service after the fulfillment of the Agreement by the Halwigs and Nollers violates the DIUC commitment made to them in December of 2015: "Daufuskie Island Utility Company (Company) will continue to preserve, maintain and provide service to all customers within its service area, including service to the Halwig property.we will continue to provide utility service as originally designed and in compliance with all regulatory requirements." The water and sewer service has not been restored in order for these families to be able to use their properties, and DIUC has failed to live up to its responsibilities.

⁴ It is possible the Tax Act triggering the potential new tax will be amended before any such tax is due.

⁵ December 10, 2015 DIUC correspondence to Halwig counsel.

Public Service Commission of South Carolina, Halwig and Noller Complaint
RE: Daufuskie Island Utility Commission filed November 16, 2018
Page 6

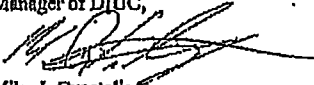
Continuation of Relief Requested

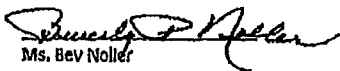
The PSC should require that DIUC restore water and sewer service to its customers Halwig and Noller immediately and that DIUC reimburse the Halwigs and the Nollers for all costs paid to replace the mains serving the portion of Driftwood Cottage Lane above the road wash out for and such other and further relief as the PSC may deem just and proper.

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Under the circumstances of the need for this agreement, there will be no charge for administrative fees. Upon execution of this agreement and compliance with its provisions, service will be connected to Customers premises.

GUASTELLA ASSOCIATES, LLC
Manager of DJUC,


Mike J. Guastella
Vice President- Operations


Ms. Bev Noller

Dr. Michael Halwig

Cc: Willie Morgan
Chad Campbell

ADDENDUM TO CUSTOMER SERVICE AGREEMENT

WHEREAS, Michael Halwig, Nancy Halwig, Beverly Noller and Stephen Noller (together the "Customers") and Daufuskie Island Utility Company, Inc. ("DIUC") entered into a Customer Service Agreement ("CSA") (copy attached hereto as **Exhibit A**);

WHEREAS, pursuant to the CSA, the Customers caused to be installed certain water mains and facilities ("Project Mains" as referenced in the CSA);

WHEREAS, the Project Mains includes the Curb Stops and Meters installed by DIUC but does not include any items located on the premises owned by the Customers (the Premises");

WHEREAS, the Customers represent to the best of their knowledge that the Project Mains comply with all applicable laws, ordinances, rules, regulations and lawful orders of governmental authorities;

WHEREAS, the Customers have provided DIUC with an acknowledged bill of sale transferring the Project Mains to DIUC (copy attached hereto as **Exhibit B**);

WHEREAS, the Customers and DIUC wish to enter into this Addendum to the CSA in order to clarify the obligations between them pursuant to the CSA and to resolve all issues between them so as to avoid the costs of and delays associated with having disputed issues resolved by litigation, mediation, arbitration, or other complaint procedures or processes;

WHEREAS, the Drawings of Record/As-Built Drawings (copy attached hereto as **Exhibit C**), depict the newly installed Project Mains to be owned, operated, and maintained by DIUC and also depict certain items located on the Customers' property which will remain the property of and responsibility of the Customers;

WHEREAS, pursuant to NARUC prescribed Uniform System of Accounts, when DIUC incorporates the Project Mains into its system it will book the cost of the Project Mains as

Complainants 00149

Contributions In Aid Of Construction;

WHEREAS, pursuant to the recent Tax Cuts and Jobs Act, DIUC will incur a tax liability at a rate of \$33.24 for every \$100.00 of the amount booked as Contributions In Aid Of Construction;

WHEREAS, pursuant to Paragraph 3 of the CSA, the Customers have provided invoices (copies attached hereto as Exhibit D) for costs associated with the Project Mains as follows:

PINCO	\$ 69,337.72 ¹
Thomas and Hutton	\$ 39,346.35
Joe Davis	\$ 2,650.00
Sea Island Land Survey	\$ 1,300.00
SC DHEC	\$ 250.00
Transportation Costs	\$ 70.00
TOTAL	\$ 112,954.07

WHEREAS, DIUC has provided the Owners with a statement from its legal counsel (copy attached hereto as Exhibit E)² indicating that DIUC has incurred legal costs of \$3,900.00 related to the matters contained in the CSA;

WHEREAS, DIUC has provided the Owners with a statement (copy attached hereto as Exhibit F) indicating that DIUC incurred ferry transportation costs of \$70.00 for the Customers' engineer Fred Soxorian; and

WHEREAS, as a result of incorporating the Project Mains into its utility plant in service, DIUC will incur a tax obligation of \$37,545.93, which is equal to 33.24% of \$112,954.07.

THEREFORE, in order to resolve all questions as to the obligations of the Owners and DIUC pursuant to the CSA, the Owners and DIUC agree:

¹ Supplemental Schedule from Pinco totaling \$76,487.72 less \$7,150.00 for Items 6 and 7 which will remain the property and responsibility of the Customers.

² The Customers and DIUC agree that production of the invoice does not constitute a waiver of any work product protections or the attorney-client privilege.

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1. The Customers shall pay to DIUC \$3,900.00 for legal costs and \$37,545.93 for taxes incurred. Said payment shall be made by cashiers check payable to Daufuskie Island Utility Company, Inc. and delivered to: Thomas P. Gressette, Jr., Esq., Walker Gressette Freeman & Linton, LLC, 66 Hasell Street, Charleston, SC 29401.

2. The Customers will withdraw and release any and all claims and complaints they have asserted or may assert against DIUC in regard to the installation of the Project Mains, including but not limited to, those issues raised by letter from Newman Jackson Smith, Esq. to Chad Campbell dated September 11, 2018 (copy attached hereto as Exhibit G).

IT IS SO AGREED THIS ____ DAY OF OCTOBER, 2018.

Witness

Stephen A. Noller
Date: _____

Witness

Beverly P. Noller
Date: _____

Witness

John M. Halwig
Date: _____

Witness

Nancy D. Halwig
Date: _____

Daufuskie Island Utility Co., Inc.

Witness

Signed: _____
Printed Name: _____
Title: _____
Date: _____

ELECTRONICALLY FILED - 2018 December 17 3:06 PM - SCPSC - Docket # 2018-364-WS - Page 1 of 12

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2018-364

Stephen and Beverly Noller and)	
Michael and Nancy Halwig,)	
Complainants,)	
v.)	ANSWER
)	
Daufuskie Island Utility Co., Inc.,)	
Respondent.)	

Daufuskie Island Utility Company, Inc. ("DIUC") hereby answers the Complaint of Stephen and Beverly Noller and Michael and Nancy Halwig (together the "Customers").

SUMMARY

The Customers own property located on Driftwood Cottage Lane, Daufuskie Island, South Carolina. DIUC provided the Customers water and sewer services until a hurricane destroyed Driftwood Cottage Lane and the DIUC infrastructure that allowed DIUC to service the Customers' property. After the on-island property owners association, Melrose Property Owners Association ("MPOA"), rebuilt Driftwood Cottage Lane, DIUC re-installed infrastructure and resumed water and sewer service to the Customers.

In 2016 another storm, Hurricane Matthew, again washed out Driftwood Cottage Lane and the DIUC infrastructure in the utility easement adjacent to the roadway. Following Hurricane Matthew MPOA determined it was too risky to rebuild the roadway again. The decision provided to DIUC via email from MPOA stated:

The Melrose POA has made extensive efforts to protect and repair Driftwood Cottage Lane. Unfortunately the Atlantic Ocean has proved to be a force we cannot compete with. At this time, most of the road right of way and easement owned by the MPOA no longer exists – it is under water. The MPOA has utilized every reasonable option available to protect Driftwood Lane, but those options are limited by what the Ocean Coastal Resources Management agency will

allow. The only temporary protective devices allowed by ORCM are sandbags and sand backfill. After finally receiving an Emergency Permit for road protection, in the spring of 2015 we spent over \$60,000. installing heavy duty Geo sandbags and dumping tons of sand backfill to protect the road. The king tides of October 2015 washed most of that away and successive storms have completed the destruction and caused even further erosion. The MPOA cannot reconstruct or protect Driftwood Cottage Lane because it is not allowed to use the materials necessary to ensure any permanence to the effort.

Email, December 19, 2016, from Julie DiIullo, MPOA President, to Mike Guastella of DIUC.

DIUC consulted with ORS and understood that since its easement had washed into the sea, DIUC was not obligated to purchase additional easements to install for a third time infrastructure to serve these two customers. DIUC determined it would not be prudent to expend other ratepayers' funds to acquire a new easement and then reconstruct services to these homes; furthermore, the homes at issue lack any significant protection from erosion and equipment installed would not last very long at all before again being destroyed by erosion. However, the Customers were willing to pay for the cost of securing services, so the Customers and DIUC entered into a Customer Service Agreement ("CSA") whereby the Customers would bear all such costs.

Now that construction is complete, the Customers have decided they would prefer the ratepayers absorb the costs. So, the Customers refused to adhere to the CSA's provision requiring the Customers to pay DIUC its tax obligations and have asked this Commission to force DIUC to repay the Customers for the infrastructure the Customers volunteered to install themselves pursuant to the CSA. The claims in the Complaint are without merit and should be dismissed.

THE PROPERTY AT ISSUE

The following photographs taken December 9, 2018, demonstrate the unique circumstances at issue and the reasons a responsible utility would proceed cautiously with any expenditure for these at-risk properties.

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Image 1(above) Halwig Residence, South Side. Image 2(below): Halwig Residence, North Side



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Image 3(above): Noller Residence South Side. Image 4(below): Noller Residence North Side.



As shown in the photograph below, the abandoned homes to the immediate South of the Noller residence foretell the inevitable future of the Halwig and Noller properties.



*Image 5: Abandoned Properties Immediate South of Noller Residence
(formerly 29 and 33 Driftwood Cottage Lane)*

A current Google Earth image (below) shows Driftwood Cottage Lane now ends at Lot 22 and demonstrates that any effort by DIUC to obtain new easements and to install new lines, as requested by the Halwigs and Nollers, would only benefit the Halwigs and Nollers. Also shown are the posts that remain of two failed seawalls across the Halwig property (Numbered 42, 44, and 46). These failed attempts to combat erosion are also shown in Images 1 and 2 and further demonstrate the risk of installing lines to these properties.

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Image 4: Driftwood Lane Destroyed
 36 – Noller
 42, 44, 46, 48 – Halwig

DISCUSSION

Following Hurricane Matthew, in order to connect service to the Noller and Halwig houses, a new utility easement would need to be acquired and then infrastructure designed and rebuilt; this would be a costly endeavor to benefit only two ratepayers whose service use was likely to be very short term. DIUC sought input from ORS. ORS did not take the position that DIUC was obligated to incur these expenses and ORS did not agree DIUC should pass these costs on to its other ratepayers. It would not have been a prudent decision for DIUC to voluntarily install lines to these two rapidly eroding properties and then attempt in its next rate proceeding to make all the other DIUC ratepayers absorb the cost.

DIUC reported to the Customers its determination regarding the feasibility, cost, and risk

of re-installing lines but the Customers nonetheless wished to obtain service. So, the Customers and DIUC negotiated then entered into a Customer Service Agreement ("CSA") (copy attached to Complaint). DIUC provided ORS a copy of the negotiated CSA and discussed with ORS counsel that the CSA did not require any further ORS or Commission approval.

Pursuant to the CSA, the Customers would construct infrastructure that upon approval by DIUC could become part of the DIUC system allowing DIUC to serve the Customers. Some of the installed items would be on the Customer's property and would remain under the Customers' ownership and care.

The CSA contains the following relevant provisions:

1. In order to protect other customers from sharing in the cost responsibility, it would be the responsibility of the affected Customers to have the Project Mains installed.

The purpose of this provision was to prevent DIUC's other customers from being forced to subsidize a third installation of infrastructure to the Customers' property.

5. Upon Completion of the Project Main, Customers will provide DIUC with an acknowledged bill of sale transferring them to DIUC, and they shall be and remain the property of DIUC and its heirs and successors, and will be treated as contributed for rate setting purposes.

This provision specifically explains that the Customers and DIUC are agreeing the Project Mains will become the property of DIUC and they will be booked by DIUC as contributions in aid of construction. When a utility treats items "as contributed for rate setting purposes," the utility incurs taxes. The Customers, then, are required to pay those taxes in this instance per Paragraph 1 of the CSA; otherwise, DIUC's other customers would not be protected from sharing in the cost responsibility.

Pursuant to the Tax Cuts and Jobs Act ("TCJA"), DIUC will be required to pay taxes for the contributions in aid of construction related to the Customers' contributions to the DIUC system.

Specifically, DIUC will incur a tax liability at a rate of \$33.24 for every \$100.00 of the amount booked as contributions in aid of construction. The amount taxed will include costs for the infrastructure as well as associated engineering and labor costs. The TCJA was in effect when the CSA was executed on January 30, 2018.

After construction was completed and DIUC received all the necessary documentation required by the CSA, counsel provided a document outlining the taxes due. Because counsel for the Customers had recently initiated an informal complaint with ORS, the document was intended to evidence the transaction was complete and that all conflicts between the Customers and DIUC had been amicably resolved. The document was captioned as "Addendum to Customer Service Agreement," which the Customers appear to have perceived to be some sort of renegotiation of the CSA. That was not the purpose of the document, as explained by correspondence from DIUC counsel (copy attached hereto as *Exhibit A*).

DIUC has obtained necessary documentation to complete the transaction described in the CSA and invoices for the following costs associated with the Project Mains:

PINCO	\$ 69,337.72
Thomas and Hutton	\$ 39,346.35
Joe Davis	\$ 2,650.00
Sea Island Land Survey	\$ 1,300.00
SC DHEC	\$ 250.00
Transportation Costs	\$ 70.00
	\$ 112,954.07
Tax Rate	33.24%
Tax Due	\$ 37,545.93

DIUC provided the Customers with a statement from its legal counsel indicating that DIUC has incurred legal costs of \$3,900.00 related to the matters contained in the CSA. The legal fees are a cost to DIUC as part of the CSA and DIUC is not authorized to pass that cost on to its other customers.

Based upon the terms of the CSA and all the information available to date, the Customers are obligated to pay the tax obligation of \$37,545.93, which is equal to 33.24% of \$112,954.07, that DIUC must pay in taxes, plus reimbursement for DIUC legal fees in the amount of \$3,900.

As indicated in DIUC's communications with the Customers' counsel and filings in this matter, DIUC remains willing to cooperate with the Customers and to assist as it is able. However, DIUC is not at this time authorized to pass on to its ratepayers these costs attributable solely to the installation of the Project Mains for the Customers. To ensure its collection of these costs and to prevent DIUC's other customers from bearing the burden of the same, DIUC requires remittance per the CSA prior to activating service for the Customers.

DIUC consulted ORS after Hurricane Matthew and DIUC consulted with ORS regarding the Customer Service Agreement. DIUC has complied with the terms of its agreement with the Customers and DIUC has done its very best to proceed prudently in this situation. The Customers are contractually obligated to bear the costs they assumed under the CSA, which is a valid and enforceable agreement.

WHEREFORE, having answered the Complaint herein, Respondent DIUC asks that the claims against DIUC in this matter be dismissed and the Customers be instructed to comply with the terms of the CSA.

FURTHERMORE, in accordance with the Notice of Hearing and Testimony Submission Letter, both dated December 4, 2018, and filed in the docket of this matter, DIUC intends to present additional arguments and evidence in support of its positions.

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Respectfully submitted,

/s/ Thomas P. Gressette, Jr.
Thomas P. Gressette, Jr.
Direct: (843)-727-2249
Email: Gressette@WGFLAW.com
G. Trenholm Walker
Direct: (843) 727-2208
Email: Walker@WGFLAW.com

WALKER GRESSETTE FREEMAN & LINTON, LLC
Mail: PO Box 22167, Charleston, SC 29413
Office: 66 Hasell Street, Charleston, SC 29401
Phone: 843-727-2200

December 17, 2018
Charleston, SC

EXHIBIT A

From: [Thomas P. Gressette, Jr.](#)
To: [Jack Smith](#)
Subject: RE: 46 & 36 Driftwood Cottage Lanes (Halwig and Noller Residences)
Date: Wednesday, October 31, 2018 2:35:00 PM

Jack,

Thanks for your letter. I apologize if I created confusion by the Addendum I recently forwarded. DIUC did not intend to change the Customer Service Agreement ("CSA"); my goal was just to assemble and identify all the various documents in one place for the parties. If there is a better way to handle the paperwork, I am certainly open to that.

DIUC does not want to alter the terms of the CSA. As we have discussed, DIUC cannot charge its other customers for the \$3,900.00 for legal costs and \$37,545.93 for taxes DIUC will incur for the Contributions in Aid of Construction. In order to protect other customers from sharing in the cost responsibility, as set forth in the CSA, the Halwigs and Nollers must bear that cost.

Best,

Tom

From: Margaret Marks <margaret.marks@nelsonmullins.com> **On Behalf Of** Jack Smith
Sent: Wednesday, October 31, 2018 1:52 PM
To: Thomas P. Gressette, Jr. <Gressette@WGFLAW.com>
Subject: 46 & 36 Driftwood Cottage Lanes (Halwig and Noller Residences)

Please see the attached letter.

Best,

Jack

 **NELSON MULLINS**
Jack Smith
jack.smith@nelsonmullins.com | 843.534.4309
151 Meeting Street Suite 600 | Charleston SC 29401

Confidentiality Notice

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EXHIBIT A

print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

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STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION
DOCKET NO. 2018-364-WS

Stephen and Beverly Noller and)	
Michael and Nancy Halwig,)	
)	
Complainants,)	
)	
v.)	COMPLAINANTS' PETITION FOR
)	REHEARING OR RECONSIDERATION
Daufuskie Island Utility Co., Inc.,)	
)	
Respondent.)	
)	

Pursuant to S.C. Code Ann. § 58-5-330 and S.C. Code Ann. Regs. 103-825 and 103-854, and applicable South Carolina law, Complainants Stephen and Beverly Noller and Michael and Nancy Halwig ("Complainants" or "Homeowners") hereby respectfully petition the Public Service Commission of South Carolina ("Commission") to reconsider its findings and conclusions in Order No. 2019-424 ("Order").

On June 12, 2019, the Commission issued the Order dismissing the Complaint in this matter determining as the sole basis for dismissal that the Commission does not have statutory authority to grant monetary damages in favor of Homeowners in their Complaint against Daufuskie Island Utility Co., Inc. ("DIUC"). The Order also stayed any disconnection of service for the Homeowners while contractual disputes are pending based on its jurisdiction over service-connection and termination issues.

Complainants ask the Commission to reconsider this matter as follows:

1. This Commission has jurisdiction over this matter, because DIUC has failed to provide adequate and proper water and sewer service to Homeowners.

Ensuring that utilities provide adequate and proper water and sewer service to customers is the most basic of reasons that the Commission has jurisdiction over this matter. The Commission's regulations (S.C. Code Reg. 103-540, 103-740 and 103-555) require the provision of service. DIUC refused to provide the infrastructure necessary to serve Homeowners' homes after a storm damaged its water and sewer mains. DIUC then forced the homeowners to provide their own infrastructure and donate that infrastructure to DIUC. Even after the Homeowners installed the infrastructure that DIUC should have provided, DIUC continued to withhold service. DIUC insisted that Homeowners agree to pay taxes and attorney fees to DIUC before DIUC would restore service. DIUC continued to withhold service until after Homeowners filed their Complaint. DIUC failed to provide service for over two (2) years while it required Homeowners to install the means to provide services and demanded that Homeowners pay taxes and attorney fees as a condition of service.

The provision of adequate and proper water and sewer services by a utility is squarely within the Commission's jurisdiction. As noted in the Order the Commission has jurisdiction over service connections and ordered that no disconnection of service result during the contractual dispute. The Commission has the authority to require DIUC to provide the service connection and not allow DIUC to require the Homeowners to provide it.

2. The Commission has jurisdiction to hear this matter in order to remedy the failure of DIUC to submit the Customer Service Agreement for approval before it was forced onto Homeowners.

The Commission has jurisdiction over this matter, because DIUC has attempted to circumvent the Commission's authority over rates by charging the individual homeowner Complainants the costs of installation of replacement facilities and equipment now owned by the utility and other costs outside of its approved rates without Commission approval.

The Commission should have reviewed the Customer Service Agreement for approval or disapproval prior to execution. S.C. Code Reg. 103-541 and 103-743. S.C. Code Reg. 103-541 provides as follows:

No utility shall execute or enter into any agreement or contract with any person, firm, partnership, or corporation or any agency of the Federal, State or local government which would impact, pertain to, or effect said utility's fitness, willingness, or ability to provide sewerage service, including but not limited to the collection or treatment of said wastewater, without first submitting said contract in form to the commission and the ORS and obtaining approval of the commission.

(emphasis added). S.C. Code Reg. 103-743 provides as follows:

No utility shall execute or enter into any agreement or contract with any person, firm, partnership, or corporation or any agency of the Federal, state, or local government which would impact, pertain to, or effect said utility's fitness, willingness, or ability to provide water service, including but not limited to the treatment of said water, without first submitting said contract in form to the commission and the ORS and obtaining approval of the commission.

(emphasis added).

DIUC never asked for approval of the Commission and only submitted it to ORS after the Agreement was executed and after the Homeowners' installation of infrastructure was complete.¹ DIUC's failure to submit the Customer Service Agreement for approval prior to its execution to ORS and the Commission violates these state regulations for contract approval and shows DIUC's efforts to circumvent the rate setting authority of the Commission. The Customer Service Agreement is in violation of state regulation and public policy. *See, e.g., White v JM Brown Amusement*, 360 SC 366, 601 SE2d 342 (2004).

¹ See Testimony of Michael J. Guastella, Vice President of Operators for Guastella Associates, Inc., which provides utility rate, valuation and management consulting services to DIUC, dated February 6, 2019, at 20:1-22:2; see also Letter from ORS to Dr. John Halwig dated December 2, 2016, Complainants 00053-54, in which ORS confirmed that it informed DIUC of the applicable PSC regulations concerning its responsibilities.

The Commission has jurisdiction in this matter as provided by its own regulations. To avoid jurisdiction here is to say that the Commission does not have authority under S.C. Code Reg. 103-541 and 103-743.

The Commission also has jurisdiction here through its authority to set utility rates. DIUC charged the Homeowners the costs of installation of replacement facilities and equipment and required them to transfer ownership of such facilities and equipment to DIUC in order to provide service. The Commission's jurisdiction includes authority over a utility that circumvents the usual rate making process in a manner such as DIUC has imposed on Homeowners in the same manner that the Commission has authority over rates in the usual rate making process.

3. The Commission has authority to provide monetary remedies to Complainants.

S.C. Code Ann. § 58-5-270 and §58-5-710 both also provide for jurisdiction in this matter. The Commission has not only the explicit authority provided in the statutes and regulations but also the implicit authority needed to carry out those responsibilities. *See Hamm v. Central States Health and Life Co. of Omaha*, 299 S.C. 500, 386 S.E.2d 250 (1989)(holding in favor of the implied power to issue refunds). In the *Hamm* decision, the South Carolina Supreme Court distinguished its prior decision in *South Carolina Electric & Gas Co. v. Public Service Comm'n*, 275 S.C. 487, 272 S.E.2d 793 (1980), in which it held that the Commission did not have the authority to issue refunds in accordance with past-approved lawful rates. 386 S.E.2d at 253 (emphasis added). As set forth above, the Commission did not approve the Agreement and the fees and costs required by DIUC of the Homeowners were thus not lawful fees and costs. Further, the Commission stated that based its Order on a lack of jurisdiction to grant monetary damages, while the Petition requested that Homeowners be "reimbursed" by DIUC.

Even if upon reconsideration the Commission determines that it does not have authority to order monetary relief, the Commission should take jurisdiction based on 1) its authority to ensure that a utility provide adequate and proper service to its customers, 2) the requirement that a utility present such a contract to the Commission for approval prior to its execution, and 3) its rate making regulatory authority. Courts and administrative authorities hear and decide matters without granting all relief requested in many instances. The Complaint requested that the Commission require that "DIUC restore water and sewer service to its customers Halwig and Noller immediately and that DIUC reimburse the Halwigs and the Nollers for all costs paid to replace the mains serving the portion of Driftwood Cottage Lane above the road wash out *and for such other and further relief as the PSC may deem just and proper.*" (emphasis added)

Here water and sewer service have now been restored, and that service is temporarily protected by the Commission's Order. As set forth above, Homeowners request monetary reimbursement by DIUC and believe that the Commission has the jurisdiction and authority to require such relief. However, even if upon reconsideration the Commission determines that it does not, the Commission should still assert its clear jurisdiction in this matter for all of the reasons set forth above and find that DIUC did not comply with Commission regulations in failing to submit the agreement to the Commission and requiring Homeowners to sign the unapproved agreement to fund the replacement lines to enable service to be restored.

CONCLUSION

The facts of this matter provide jurisdiction to the Commission for DIUC's failure to provide adequate and proper service to its customers, its charging of customers of cost of installation, its failure to submit the agreement to the Commission for approval prior to its execution, and DIUC's attempt to circumvent the Commission's rate approval authority. To

deny jurisdiction in this matter is to say that the Commission does not have authority over a utility's obligation to provide adequate and proper service to its customers, to enforce its regulation that requires approval of an agreement that restores a utility's ability to provide service prior to its execution, or over the costs and rates charged by a utility to its customers.

For all of the reasons set forth above and in Complainants' prior pleadings and briefs, Complainants request that this Commission acknowledge its jurisdiction in this matter and schedule the hearing on the merits as soon as possible.

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June 21, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE PUBLIC SERVICE COMMISSION

Public Service Commission Docket No. 2018-364-WS

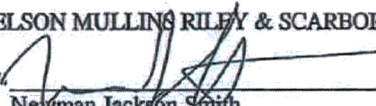
Michael and Nancy Halwig and Stephen and Beverly Noller, Appellants,
v.
South Carolina Office of Regulatory Staff, Daufuskie Island Utility Co., Inc. Respondents.

NOTICE OF APPEAL

Michael and Nancy Halwig and Stephen and Beverly Noller appeal Order No. 2019-424 dated June 12, 2019 in Docket No. 2018-364-WS of the Public Service Commission (attached as Exhibit A). On July 17, 2019 Appellants received written notice of entry of Order No. 2019-523 of the Public Service Commission denying the Appellants' motion to reconsider the June 12, 2019 Order (attached as Exhibit B). The names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each are presented below.

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